

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**DEEANN HORN,**

**Plaintiff,**

**v.**

**CITY OF MACON, *et al.*,**

**Defendants.**

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**CIVIL ACTION NO. 5:14-CV-364 (MTT)**

**ORDER**

Plaintiff Deann Horn has moved to voluntarily dismiss her complaint without prejudice pursuant to Fed. R. Civ. P. 41 because she has “discovered an additional Defendant and cause of action for which the statute of limitations has not expired, and intends to file in that matter” and thus seeks “[t]o avoid duplication of action.” (Doc. 35 at 1). Because the Defendants have filed their answer as well as a motion for summary judgment and have not signed a stipulation of dismissal, this “action may be dismissed at the [P]laintiff’s request only by court order, on terms that the [C]ourt considers proper.” See Fed. R. Civ. P. 41(a)(2). “[T]he decision whether or not to grant such a dismissal is within the sound discretion of the district court ....” *Fisher v. Puerto Rico Marine, Mgmt., Inc.*, 940 F.2d 1502, 1502-03 (11th Cir. 1991).

The Plaintiff moved for voluntary dismissal more than two weeks after the Defendants moved for summary judgment. The Defendants object to the Plaintiff’s motion, contending it can “be inferred that Plaintiff is attempting to avoid responding to Defendants’ dispositive motion—and avoid the costs of obtaining the original deposition transcripts,” and they emphasize the “considerable time and expense” in preparing their

motion for summary judgment, defending and taking depositions, and preparing written discovery and discovery responses.” (Doc. 36 at 4). Given that the lawsuit has been pending for 17 months, discovery has been extended twice to allow an additional 5 months, extensive discovery has been conducted and concluded, and a dispositive motion has been filed, the Court finds that granting the Plaintiff’s motion would prejudice the Defendants. *See Fisher*, 940 F.2d at 1503 (“[W]hen exercising its discretion in considering a dismissal without prejudice, the court should keep in mind the interests of the defendant, for Rule 41(a)(2) exists chiefly for protection of defendants.”). Accordingly, the Plaintiff’s motion for voluntary dismissal is **DENIED**. (Doc. 35). The Plaintiff has **14 days** from the date of this order to respond to the Defendants’ motion for summary judgment.

**SO ORDERED**, this 7th day of April, 2016.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT